

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:)	
)	
DAVID KAHLIL KHOURY)	Adversary Proceeding
(Chapter 7 Case No. <u>89-40796</u>))	
)	
Debtor)	Proceeding <u>90-4099</u>
)	
ROBERT L. COLEY,)	
United States Trustee, and)	
JAMES L. DRAKE, JR.,)	
Chapter 7 Trustee)	
)	
Plaintiff)	
)	
v.)	
)	
DAVID KAHLIL KHOURY)	
)	
Defendant)	

MEMORANDUM AND ORDER

On January 31, 1991, a hearing was held upon an Objection to Discharge filed by Robert L. Coley, United States Trustee for Region 21 and James L. Drake, Chapter 7 Trustee. Upon consideration of the evidence adduced at trial, the history of the case, the briefs and other documentation submitted by the party, and applicable authorities I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Debtor filed a petition under Chapter 13 of the Bankruptcy Code with this Court on June 2, 1989. In the Debtor's Petition, Statement of Affairs, and Schedules filed with this Court,

the Debtor answered "none" to Questions 7(a) and 7(b) concerning the existence of financial accounts, certificates of deposits and safety deposit boxes. Thereafter it came to light that the Debtor actually had bank accounts, certificates of deposits, or other financial accounts in his individual name, and corporate names, or in other individual trade names over which he had complete control and which were not disclosed at the time of making the aforesaid statement under oath and at the time of filing. On October 25, 1989, I entered an Order on Motion for Ex Parte Restraining Order filed by the Chapter 13 Trustee restraining the Debtor from withdrawing or transferring any monies from certain bank accounts or safety deposit boxes. On November 2, 1989, a hearing was held upon a Motion by the United States Trustee to convert the Chapter 13 case of the Debtor to a Chapter 7. On November 6, 1989, an Order was entered converting the Debtor's case to Chapter 7 for cause. In that Order, I made the following Findings of Fact:

[E]vidence was produced, from the Debtor and bank officials, which established that Debtor did not disclose that there was \$55,000.00 or more in the First Union Bank at the time of filing, which was clearly his money. He could draw on it any time he wanted to.... [C]ontracts that were in progress at the time were not revealed.... Debtor admitted he was moving money around because his creditors were after it. This may be an understandable human instinct but is improper motivation and shifts the scales to a conversion rather than simply a dismissal of the case.

At the hearing on the Objection of the United States Trustee and Chapter 7 Trustee to Discharge on January 31, 1991, it was stipulated that the proceedings of the hearing of November 2, 1989 would be admitted as evidence. It was also established at the January 31st hearing that at the time of filing the Debtor had

\$2000.00 to \$5000.00 in an account at First Union Bank in the name of David Khoury, Builder, which was not disclosed on his petitions. It was also established that Debtor had stock in a corporation which was not disclosed because he claimed it was worthless. The Debtor also had two bank accounts, one at Liberty Savings Bank in the amount of \$26.00, and the second at Trust Company Bank in the amount \$32.14, neither of which were revealed. Moreover, the Debtor did not disclose the \$18,750.00 received from the sale of a house in Davidson County, Tennessee on November 5, 1987. Finally, the Debtor admitted that he had not disclosed two contracts for the construction of residences on Skidaway Island, Georgia which were in progress at the time of filing.

CONCLUSIONS OF LAW

The recalcitrant Debtor may not escape a Section 727(a)(4)(A) denial of discharge by simply asserting that the admittedly omitted or falsely stated information concerned a worthless business relationship or holding. Such a defense is specious. Diorio v. Kreisler-Borg Constr. Co., 407 F.2d 1330 (2nd Cir. 1969). It is immaterial whether he intends to injure his creditors when he makes a false statement. Creditors are entitled to judge for themselves what will benefit, and what will prejudice them. In re Chalik, 748 F.2d 616, 618 (11th Cir. 1984). The Chalik Court deemed the subject matter of a false oath "material" and thus sufficient to bar discharge if it "bears a relationship to the Bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his

property". Id. In Chalik, the Debtor omitted from his Schedules twelve Corporations in which he held a substantial interest. The Debtor subsequently revealed the interest at a Rule 2004 Examination, but maintained that the omission was immaterial because the Corporations were worthless. The Eleventh Circuit affirmed denial of discharge, finding that the omission interfered with the investigation of the Debtor's financial condition, prior dealings, and the disposition of his property. The Eleventh Circuit has also held that discharge pursuant to 11 U.S.C. § 727(a)(4)(A) should not be granted where the Debtor knowingly and fraudulently made a false oath or omission in connection with its bankruptcy proceeding. In re Raiford, 695 F.2d 521, 522 (11th Cir. 1983).

The Debtor's omission of bank accounts and other assets in his schedules constitute false oaths which warrant denial of discharge. The requirement that the false oath be material, for dischargeability purposes, is satisfied if the false oath bears a relationship to the Debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or existence and disposition of the Debtor's property. 11 U.S.C. § 727(a)(4)(A); Chalik, supra; In re Mukerjee, 98 B.R. 627 (Bankr. D.N.H. 1989). Denial of discharge is justified even though assets were subsequently disclosed to the Trustee at a Creditors Meeting. In re Evans, 106 B.R. 722 (Bankr. M.D.Fla. 1989).

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law IT IS THE ORDER OF THIS COURT that the Debtor's Discharge is denied.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia
This _____ day of April, 1991.